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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com

Michael H. Pryor

Direct dial 202 434 7365
mhpryor@mintz.com

July 27, 2001

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

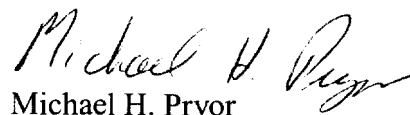
Re: **Ex Parte Communication CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996**

Dear Ms. Salas:

On Thursday, July 26, 2001, Doug Brandon, Vice President - External Affairs, AT&T Wireless and the undersigned, along with representatives from VoiceStream Wireless and Nextel Communications, met with staff of the Commission's Common Carrier Bureau and Wireless Telecommunications Bureau to discuss CMRS carriers' access to unbundled dedicated transport. The Common Carrier Bureau staff present at the meeting were: Michelle Carey, Julie Veach, Jeremy Miller, and Jon Reel. The Wireless Telecommunications Bureau staff participating in the meeting were Tom Navin, Stacy Jordan and Gregory Vadas. VoiceStream representatives attending the meeting were Bob Calaff, Doug Bonner, Carl Hansen and Elizabeth Dickerson. Also in attendance was Bob Edgerly of Nextel. The attached documents formed the basis of AT&T Wireless's presentation.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this letter and the attachment are being submitted to the Office of the Secretary. I am also providing a copy of this letter to each of the Commission staff listed above. Please associate this filing with record in the proceeding identified above.

Very truly yours,


Michael H. Pryor

MHP:cr1
Enclosure

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Ms. Magalie Roman Salas

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cc: Michelle Carey
Julie Veach
Jeremy Miller
Jon Reel
Tom Navin
Stacy Jordan
Gregory Vadas

**CMRS CARRIER ACCESS TO
UNBUNDLED DEDICATED TRANSPORT
CC DOCKET 96-98**

July 26, 2001

AWS

**THERE IS A PRESENT OBLIGATION TO PROVIDE
UNBUNDLED NETWORK ELEMENTS TO CMRS PROVIDERS.
NO “EXTENSION” OF EXISTING REGULATIONS IS
REQUIRED.**

- ◆ Under a plain reading of the 1996 Act, the ILECs’ obligation to provide access to unbundled network elements extends to all “telecommunications carriers.”
 - Section 251(c)(3) imposes a duty on ILECs to provide access to UNEs to “any requesting telecommunications carrier for the provision of a telecommunications service.” CRMS providers are telecommunications carriers. 47 C.F.R. 51.5 (definition of telecommunications carrier “includes CMRS providers”); *Local Competition Order (“LCO”)*, ¶¶ 1012, 1041.
- ◆ The Commission has consistently interpreted Section 251(c)(3) to apply to CMRS carriers:
 - CMRS carriers are “entitled to the benefits of Section 251(c), which include the right to ... obtain access to unbundled elements...” *LCO*, ¶ 993.
 - “The *UNE Remand Order* also clarifies that incumbent LECs must make network elements available to any requesting telecommunications carrier, which includes CMRS licensees subject to the wireless E911 rules. ...Incumbent LECs thus are obligated under the 1996 Act *and existing Commission rules* to provide CMRS carriers with access to 911 and E911 databases pursuant to [the Commission’s unbundling rules]....” *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20890, ¶¶ 100-101 (emphasis added).

A SEPARATE IMPAIRMENT ANALYSIS IS NOT REQUIRED

- ◆ CMRS carriers have no better alternatives to ILEC dedicated transport than do CLECs and a finding of impairment for CLECs is equally applicable to CMRS providers.
- ◆ In the *UNE Remand Order*, the Commission reviewed an extensive record and determined that requesting carriers were impaired without access to dedicated transport.
- ◆ There are currently two proceedings where the Commission will conduct a further comprehensive assessment of alternatives to ILEC dedicated transport. The ILEC's obligation to provide dedicated transport to CMRS carriers is raised in both proceedings. (See, VoiceStream Comments, Nextel Comments, AT&T Corp. Opposition at 10-11 in Opposition to Joint Petition in CC Docket 96-98; Reply Comments of AT&T Corp. on Use of Unbundled Network Elements to Provide Exchange Access Services, p. 5)
- ◆ If anything CMRS carriers are more reliant on ILEC facilities:
 - AWS relies on ILEC special access facilities for at least 90% of its transport.
 - CMRS carriers need transport from nearly every ILEC wire center in their service areas.
 - CMRS carriers utilize special access facilities to provide telephone exchange service and exchange access primarily to individual consumers. *See, LCO*, ¶ 1013 (“CMRS carriers provide local, two-way switched voice service” and are “generally engaged in the provision of local exchange telecommunications in conjunction with local telephone companies....”) (cites omitted).

THE AVAILABILITY OF TRANSPORT FROM ILEC SPECIAL ACCESS TARIFFS IS NOT A SUBSTITUTE FOR UNEs.

- ◆ “US West maintains that it need not unbundle local transport because requesting carriers can purchase its tariffed special access services. In light of the little weight we assign to the availability of resold services in our analysis, we reject US West’s argument.” *UNE Remand Order*, ¶ 67. See also *Id.* at ¶ 354 (“We also reject GTE and US West’s argument that competitive LECs have access to ubiquitous transport through the use of the incumbents’ special access tariff arrangements.”)
- ◆ By refusing to fulfill their statutory obligation to provide UNEs, ILECs continue to extract exorbitant fees from CMRS carriers.
 - The Commission has noted the enormous price differentials between TELRIC priced transport and special access. *UNE Remand Order* n. 673. (noting that the tariffed rate for DS 3 dedicated transport is 50% higher than the comparable unbundled network element rate in San Francisco, 258% higher in New York, and 353% higher in Miami).

THE FACILITIES CMRS CARRIERS SEEK TO CONVERT FIT WITHIN UNE DEFINITIONS

- ◆ The Commission defines the dedicated transport UNE as “incumbent LEC transmission facilities . . . dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.” 47 C.F.R. 51.319(d)(1)(i).
- ◆ CMRS carriers purchase transport between Mobile Switching Centers (MSCs) and ILEC wire centers, between one ILEC wire center and another ILEC wire center, and between ILEC wire centers and CMRS base stations. Each of these falls within the UNE definition:
 - Transport between a MSC and ILEC wire centers easily falls within the existing definition. Such transport may be point to point or through connection with a SONET ring.
 - Transport between ILEC end offices. The special access circuits often transit a number of ILEC wire centers between the MSC and the base station. These too easily fit within the FCC’s definition.

- Transport between ILEC wire centers and base stations. Base stations function like remote terminals, aggregating and concentrating traffic to be transported over ILEC special access circuits to and from the MSC. The Commission has concluded that terminals that transmit wireless signals to the end user perform a function equivalent to an end office:

“A paging terminal performs a termination function because it receives calls that originate on the LEC’s network and transmits the calls from its terminal to the pager of the called party. This is equivalent to what an end office switch does when it transmits a call to the telephone of the called party.” *TSR Wireless, LLC v. U.S. West Communications Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11179, ¶ 22.

- Transport to deliver CMRS originated traffic to ILEC tandems or end office switches for termination on the ILEC network. The Commission has held that carriers may “also require dedicated transport to deliver traffic from their own traffic aggregation points to the incumbent LEC’s network for purposes of interconnection.” *UNE Remand Order*, ¶ 346.

- ◆ SONET Rings. ILECs must unbundle SONET rings that are part of the ILECs' transport network. An ILEC's "unbundling obligation extends throughout its ubiquitous transport network, *including ring transport architectures.*" UNE Remand Order, ¶ 324 (emphasis added).
- ◆ Special Construction. That Special Construction *may* be involved does not eliminate the duty to provide UNEs. Special construction charges can be addressed in interconnection agreements or state tariffs subject to state commission oversight for reasonableness and nondiscriminatory application. *See e.g., Investigation of Construction Charges*, 2000 Ill. PUC LEXIS 654 (Aug. 15, 2000) (finding that special construction charges amount to double recovery except in the instance of loop conditioning charges and concluding that a network element is available, *i.e.*, part of ILEC's existing network, "if it is in an area presently served" by the ILEC.)